

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DALE S. FURNISS, :
: Plaintiff, :
: v. : Civil Action No. 05-863-JJF
: :
MICHAEL J. ASTRUE, :
Commissioner of Social :
Security, :
: Defendant. :
: :
MEMORANDUM ORDER

Plaintiff has filed a Motion For Attorney's Fees Pursuant To The Social Security Act, 42 U.S.C. § 406(b) (D.I. 29) requesting fees in the amount of \$8,717.75. Defendant has filed a Response (D.I. 30) indicating that he does not object to the amount requested by Plaintiff's counsel; however, Defendant contends that the fees must be recharacterized for effectuation purposes to include \$5,000 in fees awarded to Plaintiff's counsel under the Equal Access to Justice Act ("EAJA"). Gisbrecht v. Barnhart, 535 U.S. 789 (2002). Thus, Defendant contends that Plaintiff's award of fees should amount to \$13,717.75, with the \$5,000 in fees already paid to counsel under the EAJA, to be returned to Plaintiff by Plaintiff's counsel.

In Gisbrecht, the Supreme Court held that an attorney who receives an award of fees under Section 406(b) and the EAJA must refund to the claimant the lesser of the two awards. Id. at 796. Accordingly, the Court will order Plaintiff's counsel to be

awarded fees in the amount of \$13,717.75 pursuant to 42 U.S.C. § 406(b), with the previous award of \$5,000 pursuant to the EAJA being returned to Plaintiff by Plaintiff's counsel.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. Defendant shall pay to Plaintiff's counsel, Anthony R. Mignini, Esquire the sum of Thirteen Thousand Seven Hundred Seventeen Dollars and Seventy-five Cents (\$13,717.75), in attorney's fees being withheld from Plaintiff's past-due benefits for court related services.

2. Upon receipt of this sum, Mr. Mignini shall remit Five Thousand Dollars (\$5,000.00) directly to Plaintiff, representing the sum already paid to Mr. Mignini on Plaintiff's behalf pursuant to the Equal Access To Justice Act, 28 U.S.C. § 2412.

August 25, 2008

DATE


UNITED STATES DISTRICT JUDGE